



RESPONSE	Application #	10/647,051
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	Art Unit	3731
	Examiner	Thaler, Michael H.
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S I R:

This is in response to the Restriction Requirement and requirement to elect species mailed September 27, 2006.

Applicant respectfully traverses the restriction requirement because the alleged justification for same, as set forth in the Office Action does not satisfy the requirements of MPEP § 806.05(e). For a restriction requirement, this section requires, *inter alia*, that the apparatus, as claimed can be used to practice another materially different process. The Examiner has totally failed to substantiate this requirement. After making the conclusionary statement that this requirement is satisfied, the Office Action does no more than give a completely erroneous example that this apparatus could be used to clean a nasal cavity instead of an ear duct. First, the requirement is the apparatus, "as claimed", repeat, "as claimed" can be used to practice another materially different process. Here, the apparatus claims are all directed to an "ear duct cleaning device". As such, as claimed means an ear cleaning duct and not a nasal passage cleaning duct. Moreover, the Examiner's conclusionary statement fails to take into account logic, practicality and the essential anatomy of an ear canal. An ear canal is relatively elongated, relatively narrow, and thus difficult to reach, thus justifying a special device as in the present invention. In contrast, an outer portion of a nasal passage is not long

or narrowing or hard to reach; and on the other hand if the Examiner is contemplating that the present device can be simply applied to the nasal passage beyond the outer nasal passage, there are changes in direction of the human anatomy of such extended nasal passages which are not present in the ear canal. In summary, there is no justification whatsoever for saying that the device of the present invention could be used for a materially different process of cleaning a nasal cavity, however that process might be carried out.

Section 806.05(e) further requires that the burden is on the Examiner to provide reasonable examples that recite material differences. The Examiner's example is not reasonable and hence the Examiner has not fulfilled this burden. Hence, it is respectfully submitted that the restriction requirement should be withdrawn.

For purposes of completeness, Applicant elects the claims of Group I, claims 1-19.

With respect to the requirement to elect species, Applicant believes that generic claims will be found allowable. In the meantime, Applicant provisionally elects the species of Figures 1-7. Device claims 1, 2, 5-9, and 11-19 are either generic or read on the elected species. Additionally, method claim 20 is generic to all species.